

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GARY LEE VANSCHOIACK,)
Plaintiff,) 4:05cv3301
vs.) ORDER
SAMUEL STARKEY,) ON INITIAL REVIEW
Defendant.)

This matter is before the court for initial review of the complaint filed by the pro se plaintiff, Gary Lee Vanschoiack, a prisoner. The plaintiff asserts civil rights claims pursuant to 42 U.S.C. § 1983, alleging that corrections officers failed to protect him from another inmate while the plaintiff was in the Fillmore County Jail. In addition, the plaintiff never received medical care for the assault, despite promises of treatment.

Although the complaint complains of treatment by those who operate the Fillmore County Jail, the only person named as a defendant in the caption of the complaint is the inmate who assaulted the plaintiff. A sheriff is mentioned in the body of the complaint, but the plaintiff will have to amend the complaint to add the sheriff and any other defendant(s) to the caption of the complaint where all defendants must be listed pursuant to Fed. R. Civ. P. 10(a).

As to the inmate, while the plaintiff may bring claims of assault and battery under state law in a state court against the Nebraska inmate who assaulted him, no basis for subject matter jurisdiction in this court appears in the complaint for the plaintiff's claims against the other inmate. It is unlikely that the inmate acted "under color of state law" for purposes of 42 U.S.C. § 1983, as such a defendant is not employed by, and does not act for, the State or any political subdivision. Often a case which cannot be brought in a federal district court may nonetheless be filed in a state court, as the federal district courts are courts of "limited jurisdiction," while the state courts are courts of "general jurisdiction."

In light of the foregoing, the plaintiff shall have until **April 24, 2006** by which to file an Amended Complaint. In the absence of a timely and sufficient Amended Complaint, this case may be subject, without further notice, to dismissal without prejudice.

Dated this 31st day of March, 2006.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge